

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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FILED  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
2005 JUL 29 AM 9:37

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DANIEL A. TOUTMAN, 050100,

Petitioner,

-v-

**DECISION and ORDER**  
05-CV-6348P

UNITED STATES OF AMERICA,

Respondent.

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Petitioner has filed papers seeking *habeas corpus* relief from what he claims is an unlawful detention in the Ontario County Jail, pursuant to a federal detainer. Section 2241 of 28 U.S.C. includes writs on behalf of prisoners "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner alleges that he was arrested on January 14, 2005, and has served a local sentence of eighty-nine days on a state court conviction. He remains in custody, however, on a federal detainer for a violation of supervised release in the "11th Circuit Court of South Florida." Petitioner asserts that his continued detention on the federal detainer here in the Ontario County Jail, without enforcement proceedings and/or removal to South Florida, violates his constitutional rights. Thus, the Court deems the petition to be brought pursuant to 28 U.S.C. § 2241. Petitioner also seeks permission to proceed *in forma pauperis*, and requests assignment of counsel.

IT HEREBY IS ORDERED as follows:

1. Petitioner's request to proceed as a poor person is granted.

2. Respondent shall serve and file an **answer** and **memorandum of law** with the Clerk of Court no later than **September 5, 2005**. The answer shall respond to the allegations of the application and shall indicate whether petitioner has used any other available state or federal remedies including any administrative appeals, direct judicial appeals or prior post-conviction motions. Further, the answer shall indicate whether any evidentiary hearing was afforded petitioner in a state or federal court on either direct or collateral challenge to petitioner's custody. The memorandum of law shall address each of the issues raised in the petition and include citations of relevant supporting authority.

Petitioner shall have twenty (20) days upon receipt of the answer to file a written response to the answer and memorandum of law.

Within twenty (20) days of the date this order is filed with the Clerk of Court, respondent may file a motion for a more definite statement or a motion to dismiss the application, accompanied by appropriate exhibits which demonstrate that an answer to the application is unnecessary. The timely filing of such motion shall extend the time for filing an answer for fourteen (14) days, but the failure of the Court to act upon the motion within that time shall not further extend the time for filing an answer.

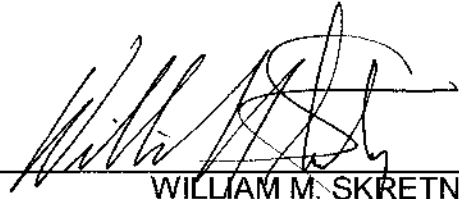
3. The Clerk of Court shall serve a copy of the application, together with a copy of this order upon the Superintendent of the Ontario County Jail, United States Attorney for the Western District of New York, at 100 State Street, Rochester, New York 14614, and the Assistant Attorney General in Charge, 144 Exchange Street, Rochester, New York 14614.

4. The request for counsel is denied at this time, because, in this case, the Court cannot properly weigh the factors to be considered for assignment of counsel without benefit of Answer. Petitioner may renew his application once issue has been joined.

**PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND  
CORRESPONDENCE TO THE ATTORNEY APPEARING FOR THE RESPONDENT.**

SO ORDERED.

Dated: July 22, 2005  
Buffalo, New York

  
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WILLIAM M. SKRETNY  
United States District Judge